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# NATIONAL CABLE SATELLITE CORPORATION

Provider of C-SPAN and C-SPAN 2

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November 7, 1996

Honorable Lee Ann Elliott  
Chairman  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

AOR 1996-48

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**Re: Advisory Opinion Request.**

Dear Madam Chairman:

Pursuant to the authority set forth at 2 U.S.C. ¶437f(a) and 11 C.F.R. ¶112.1, the National Cable Satellite Corporation (the "NCSC") hereby requests that the Federal Election Commission (the "Commission") issue an Advisory Opinion relative to the application of the so-called "news story" exception to the broadcast activities of NCSC, through its information and public affairs networks, C-SPAN and C-SPAN 2. The so-called "news story" exception to the definition of an "expenditure" is set forth at 2 U.S.C. ¶439(9)(B)(i), the Federal Election Campaign Act of 1974, as amended (the "Act").

NCSC is a non-profit corporation headquartered and doing business in the District of Columbia. NCSC was created in 1978 by the cable television industry to provide information and public affairs programming on a 24-hour per day basis via cable television through out the United States. In 1979, NCSC created C-SPAN, its first non-advertising supported television network, to cover the deliberations of the United States House of Representatives. In 1986, NCSC created its second network, C-SPAN 2 (also without advertising), to cover the deliberations of the United States Senate. Over time, both networks have expanded their original coverage to include a variety of other events at public forums around the country and the world. The Mission Statement of C-SPAN (see Exhibit 1) makes clear that the role of the C-SPAN Networks is to provide the public with balanced, unfiltered news and information about the development of public policy and the role of federal, state and local governments (including both Houses of Congress), in the development of that policy.

As an integral part of the public affairs programming made available on C-SPAN and C-SPAN 2, we cover the biennial elections for Congress, gubernatorial races, the quadrennial election for the presidency, including the presidential nominating conventions of the several political parties. Our in-depth coverage of these political events is consistent with our Mission Statement and is offered to our viewers for the sole purpose of providing an insight as to how federal and other candidates around the country are conducting their campaigns and which policy issues they are stressing as candidates. Our in-depth coverage of federal and other elections includes candidate appearances and debates, discussions with pollsters and media experts about the campaigns, and viewer call-in programs. Our campaign coverage

largely centers on two programs, "Road to the Capital" and "Road to the White House," and often includes campaign commercials and video biographies of candidates prepared for and aired by the candidates on commercial television. We air candidate biographies and commercials for the same reasons that we offer panel discussions with campaign experts and replays of candidate appearances and debates, *i.e.*, they are newsworthy, they have significant news value and they assist our viewers in understanding the complex policy issues being discussed by the candidates.

With respect to the candidate biographies and campaign commercials that we air, we acquire these campaign videos directly from the campaigns and, in so doing, take care to insure that the candidates fully understand that we alone will determine how these campaign materials will be shown to our viewers. While we do not exercise any editorial control over the content of these materials, once they have been forwarded to us the campaigns lose all control over their airing on C-SPAN and C-SPAN 2. In addition, we affirmatively take steps to insure that our viewers understand that the candidate biographies and commercials being aired are the product of the campaigns which produced them and that the airing of such materials does not constitute an endorsement by C-SPAN or C-SPAN 2 of the candidates shown in the videos. As a practical matter, the steps we take to insure there is no confusion in the minds of our viewers have included (1) introducing the video material with a narrative explaining that it is a campaign commercial or video and (2) reducing the size of the video image on the screen so as to allow the use of a written text beneath the image identifying it as a campaign commercial.

The Commission should understand that, unlike commercial television networks or their affiliates who broadcast candidate commercials and biographies for a specific fee based upon the potential audience likely to view a particular airing of the commercial or biography, C-SPAN and C-SPAN 2 are not supported by advertising and do not charge a fee for the airing of any video material. While it might be argued that the non-commercial airing of a candidate's video material on C-SPAN or C-SPAN 2 would result in something of "value" being received by the candidate as a result of such a broadcast use, any such "value" is completely unlike the actual and measurable "value" received by a candidate who purchases a specific block of time on a commercial television network or station. Candidate videos televised on C-SPAN and C-SPAN 2 are aired at times determined solely by our editorial staff and on programs, such as "Road to the Capital" and "Road to the White House," in which it is made clear to our viewers that the commercials are being aired to provide a context for the issues and personalities which are a part of all federal campaigns.

As we understand it, the Act provides, at 2 U.S.C. ¶439(9)(B)(i), an exception to the definition of an "expenditure" for any and all costs incurred by a broadcaster in airing a news story or commentary which might feature the appearance of a federal candidate. We further understand that in a limited number of instances, the Commission has provided guidance as to the scope of the so-called "news story" exception found at Section 439(9)(B)(i), specifically in Advisory Opinions 1978-76, 1982-44, 1987-8, and 1996-41. These Advisory Opinions all appear to be factually predicated on the airing of candidate-related news material on a commercial television station. It does not appear that the Commission has ever addressed the application of the so-called "news story" exception to the use of candidate biographies and

commercials by a television programmer like NCSC, which is not supported by advertising revenues and devoted exclusively to serving the public interest on a non-profit basis, in contrast to such uses made by the more traditional broadcast news programs operating in a purely commercial context, and on a for-profit basis.

C-SPAN and C-SPAN 2 antedate the adoption of the Act. Their unique format was quite obviously not considered at the time Congress developed the so-called "news story" exception. Notwithstanding that fact, the Commission has the authority and discretion to interpret this exception and apply it to our unique format.

By this Advisory Opinion request, we specifically ask the Commission to apply the news and commentary exception found in Section 439(9)(B)(i) of the Act to the airing of federal candidate video biographies and campaign commercials by NCSC as a part of their regular news and public affairs programming.

If the Commission desires any additional information concerning this request, please do not hesitate to contact me directly.

Cordially,

**NATIONAL CABLE SATELLITE CORPORATION**

A handwritten signature in black ink that reads "Bruce D. Collins". The signature is written in a cursive, flowing style.

Bruce D. Collins, Esq.  
Corp. Vice President & General Counsel

Enclosure

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## *Mission Statement*

C-SPAN is a public service created by the American Cable television industry...

To provide C-SPAN's audience access to the "live" gavel-to-gavel proceedings of the U.S. House of Representatives and the U.S. Senate, and to other forums where public policy is discussed, debated, and decided--all without editing, commentary, or analysis and with a balanced presentation of points of view;

To provide elected and appointed officials and others who would influence public policy a direct conduit to the audience without filtering or otherwise distorting their points of view;

To provide the audience, through the call-in program, direct access to elected officials, other decision makers and journalists on a frequent and open basis;

To employ production values that accurately convey the business of government rather than distract from it; and

To conduct all other aspects of its operations consistent with these principles.